

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4232 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

LAXMIBEN JAYANTILAL SIKLIGAR

Appearance:

Mr. P.G. Desai, G.P. for Petitioners
MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/11/1999

ORAL JUDGEMENT

Appeal admitted. Mr. R.N. Shah waives service
for the respondent-original plaintiff. On joint request
of learned Counsel, the appeal is taken up for final
disposal today.

1. This is an appeal at the instance of the State and its Officers under Section 96 of the Civil Procedure Code challenging the judgment and decree passed by the trial Court in favour of the respondent-original plaintiff.

2. The relevant and pertinent facts in brief are to the effect that the respondent-original plaintiff was suffering from discomfort and pain in swallowing etc., that after consulting the family physician she was ultimately referred to the Civil Hospital at Godhra, that she underwent consultation with the Civil Surgeon - Dr. Mahendra Damor (appellant-defendant no.3) and after due investigation, the said Dr. Damor performed surgery upon the thyroid gland of the plaintiff. It may be pointed out that the investigations prior to surgery, and indicators which lead to the choice of surgery indicate that the plaintiff was suffering from non toxic goitre affecting the thyroid gland. Subsequent to surgery on a pathology report it appeared that the tissues were at a pre-cancerous stage.

3. The claim of the plaintiff was that the surgery was performed upon her in a negligent manner without due caution, in an indifferent manner, and that as a result thereof she lost her voice. Hence, the claim for damages for negligence.

4. We have carefully perused the impugned judgment and decree, and we have been referred to relevant oral and documentary evidence on record by the learned Counsel for the respective parties.

5. The medical evidence including expert evidence indicates that as a result of the surgery, the plaintiff has suffered permanent partial paralysis of the larynx (voice box). This is a consequence of damage to or cutting of the recurrent laryngeal nerve. We may note here that the medical evidence indicates that there are two such nerves, each one passing on either side and behind the thyroid gland. From the medical evidence it appears that only one of those nerves was damaged and therefore, the plaintiff has not lost her voice completely, but has difficulty in speaking, cannot speak in normally loud voice, cannot raise her voice for shouting, cannot make herself heard even to a person in the next room and even has difficulty and discomfort in swallowing.

6. The main question raised before us was the question of negligence, if any, of the surgeon and the

question of compensation and its quantum.

7. In the context of negligence, we may refer only to the oral evidence of the Surgeon who performed the surgery, namely Dr. Mahendra Damor who is original defendant no.3 and examined at Exh.70. There is no doubt that he is a qualified Surgeon and he has performed, according to his own evidence, about 30 operations on the thyroid. What we wish to emphasize from this oral evidence is that when he is shown the passage pertaining to precautions to be taken for such surgery from the standard textbook " Short Practice on Surgery " by Bailey and Love (at page 581 thereof), and pertaining to preoperative investigations to be carried out and recorded, this witness categorically and blatantly states that he does not agree with the precautions and recommendations made in the aforesaid standard textbook.

7.1 On account of this response of the expert witness (Surgeon), a specific question was put to him as to whether he would agree that in and during such surgery, after making an investigation the laryngeal nerve should be identified, located and separated? To this specific question, this witness gave a specific answer to the effect that the laryngeal nerve should not even be attempted to be identified.

7.2 This witness, furthermore, specifically admits that during the surgery on the plaintiff he had made absolutely no attempt to identify or separate the laryngeal nerve.

7.3 At the same time, this witness specifically admits " Recurrent laryngeal nerve paralysis may be unilateral or by lateral, transient or permanent. Transient paralysis occurs in about 3 per cent of nerves at risk and recovers in about three weeks to three months. Permanent paralysis is extremely rare if the nerve has been identified at operation ". Thus, the oral evidence of the Surgeon himself, seen in the light of the admissions made in his deposition, clearly establishes and leads us to conclude that the damage to the recurrent laryngeal nerve of the plaintiff was entirely avoidable, if the Doctor had taken care or atleast made an attempt to identify and separate the said nerve during surgery. However, as pointed out hereinabove, the Doctor has specifically admitted, or rather asserted, that he had made absolutely no attempt to identify or separate this nerve.

8. As a consequence of such surgery, there is no

dispute that one of the two nerves suffered permanent partial paralysis leading to damage and loss of performance of the larynx (voice box) of the plaintiff.

9. In the light of this evidence, we cannot but hold that there was negligence on the part of the Surgeon to take appropriate precautions before and during surgery.

10. Now we address ourselves to the question of quantum of compensation. Having carefully perused the evidence in this context, firstly, we are of the opinion that the trial Court has grossly overestimated the compensation to which the plaintiff would be entitled. To give only one such instance, the trial Court has awarded compensation for permanently employing an attendant to take care of the plaintiff on account of handicap suffered by her. In this context, it is to be noted that the plaintiff has not completely and totally lost her voice and to engage an attendant or servant merely to function as a go-between for the purpose of communication between the plaintiff and another person does not appear to us to be justified. Moreover, the trial Court has quantified this by assigning the minimum wage payable to such a person at Rs.44/- per day on an eight hour day. Suffice it to say, that even under other heads, the quantum of compensation is, in our opinion, as generous and impermissible, as in the case of wages for such an attendant.

10.1 We are conscious that estimating compensation in such a case is an extremely difficult matter particularly since no expert evidence is on record in the context of such injuries suffered. In this context, we inquired of the learned Counsel for the State as to what figure he would suggest as reasonable. We make it clear here that the learned Counsel for the appellant has expressed his unwillingness to make any suggestion in this regard. When the same question was put to the learned Counsel for the respondent-original plaintiff, he categorically asserted that he leaves the question of compensation in the aggregate under all the heads entirely upto the Court.

10.2 No other point is urged.

11. Having given our anxious consideration to all the relevant factors and the various heads under which the plaintiff has made the claim, we are of the opinion that the plaintiff would be entitled to total compensation under all the heads at Rs.1,20,000/- (Rupees one lakh twenty thousand) with interest at 12 per cent per annum

from the date of the suit till realisation.

12. This appeal is therefore partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.

stanley-ybb.